UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEMP ROELOFTS,

Docket No. 13 CV 8947

Plaintiff,

ANSWER

-against-

435 EAST 85TH STREET TENANTS CORP.;
HALSTEAD PROPERTY, LLC;
HALSTEAD MANAGEMENT COMPANY, LLC;
PENMARK MANAGEMENT, LLC;
TERRA HOLDINGS, LLC;
MICHAEL GOBERDHAN;
And
MICHAEL GERMANO,

Defendants.

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Defendants, 435 East 85th Street Tenants Corp., Halstead Property, LLC, Halstead Management Company, LLC., Penmark Management, LLC, Terra Holdings, Inc., Michael Goberdhan and Michael Germano (collectively, "Defendants"), set forth the following as and for their Answer to the Plaintiff's Complaint:

1. The Defendants can neither deny nor admit the allegations contained in paragraph "1" of the Complaint, as it fails to set forth any allegation of fact.

2. The Defendants can neither deny nor admit the allegations contained in paragraph "2" of the Complaint, as it fails to set forth any allegation of fact.

3. Defendants neither admit nor deny the allegations contained in paragraph "3" of the Plaintiff's Complaint as it is not an allegation of fact, except Defendants admit that Plaintiff was employed in this District during all relevant times herein.

4. Defendants deny the allegations contained in paragraph "4" of the Plaintiff's Complaint, except admits that Plaintiff was employed at relevant times by some Defendants

5. Defendants deny the allegations contained in paragraph "5" of the Plaintiff's Complaint, except admits that Coop. was and is a Cooperative located in New York, New York.

6. Defendants deny the allegations contained in paragraph "6" of the Plaintiff's Complaint, except admits that Germano was at one time President of the Board of Directors of Coop.

7. Defendants admit the allegations contained in Paragraph "7" of the Plaintiff's Complaint.

8. Defendants admit the allegations contained in Paragraph "8" of the Plaintiff's Complaint.

9. Defendants admit the allegations contained in Paragraph "9" of the Plaintiff's Complaint.

10. Defendants deny the allegations contained in paragraph "10" of the Plaintiff's Complaint, except admits that Terra is a New York based Company.

11. Defendants deny the allegations contained in paragraph "11" of the Plaintiff's Complaint, except admits that various Defendants acted as property manager for the Coop at relevant times.

12. Defendants deny the allegations contained in paragraph "12" of the Plaintiff's Complaint, except admits that these Defendants did share various resources.

13. Defendants deny the allegations contained in paragraph "13" of the Plaintiff's Complaint, except admits that "Halstead" engaged in commerce.

14. Defendants deny the allegations contained in paragraph "14" of the Plaintiff's Complaint, except admits that Goberdham was employed by Halstead at relevant times herein.

15. Defendants deny the allegations contained in paragraph "15" of the Plaintiff's Complaint.

16. Defendants deny the allegations contained in paragraph "16" of the Plaintiff's Complaint.

17. Defendants deny the allegations contained in paragraph "17" of the Plaintiff's Complaint, except admits that Plaintiff performed some of the functions enumerated in Paragaph 17.

18. Defendants deny the allegations contained in paragraph "18" of the Plaintiff's Complaint, except admits that Plaintiff was paid a salary and was provided an apartment.

19. Defendants deny the allegations contained in paragraph "19" of the Plaintiff's Complaint.

20. Defendants deny the allegations contained in paragraph "20" of the Plaintiff's Complaint.

21. Defendants deny the allegations contained in paragraph "21" of the Plaintiff's Complaint.

22. Defendants deny the allegations contained in paragraph "22" of the Plaintiff's Complaint.

23. Defendants deny the allegations contained in paragraph "23" of the Plaintiff's Complaint, except admits that at some point Plaintiff was provided a job description, which he refused to sign.

24. Defendants deny the allegations contained in paragraph "24" of the Plaintiff's Complaint.

25. Defendants deny the allegations contained in paragraph "25" of the Plaintiff's Complaint.

26. Defendants deny the allegations contained in paragraph "26" of the Plaintiff's Complaint.

27. Defendants deny the allegations contained in paragraph "27" of the Plaintiff's Complaint.

28. Defendants deny the allegations contained in paragraph "28" of the Plaintiff's Complaint, except admits that Plaintiff was required to complete time sheets at various times during his employment.

29. Defendants deny the allegations contained in paragraph "29" of the Plaintiff's Complaint.

30. Defendants deny the allegations contained in paragraph "30" of the Plaintiff's Complaint, except admits that Plaintiff was terminated.

31. Defendants deny the allegations contained in paragraph "31" of the Plaintiff's Complaint, except admits that Plaintiff did receive notice of his termination in writing.

32. Defendants deny the allegations contained in paragraph "32" of the Plaintiff's Complaint.

33. Defendants admit the allegations contained in paragraph "33" of the Plaintiff's Complaint.

34. Defendants admit the allegations contained in paragraph "34" of the Plaintiff's Complaint.

35. Defendants deny the allegations contained in paragraph "35" of the Plaintiff's Complaint.

36. Defendants deny the allegations contained in paragraph "36" of the Plaintiff's Complaint.

37. Defendants deny the allegations contained in paragraph "37" of the Plaintiff's Complaint.

FIRST CAUSE OF ACTION

38. Defendants repeat and reallege each and every response to every allegation set forth in the preceding paragraphs as though set forth at length herein.

39. Defendants deny the allegations contained in paragraph "39" of the Plaintiff's Complaint.

40. Defendants deny the allegations contained in paragraph "40" of the Plaintiff's Complaint.

SECOND CAUSE OF ACTION

41. Defendants repeat and reallege each and every response to every allegation set forth in the preceding paragraphs as though set forth at length herein.

42. Defendants deny the allegations contained in paragraph "42 of the Plaintiff's Complaint.

THIRD CAUSE OF ACTION

43. Defendants repeat and reallege each and every response to every allegation set forth in the preceding paragraphs as though set forth at length herein.

44. Defendants deny the allegations contained in paragraph "44" of the Plaintiff's Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

45. Some or all of the claims made in the Subject Complaint fail to set forth a claim for which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

59. Defendants have paid Plaintiff properly for all hours worked.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

60. The Subject Complaint is barred, in whole or in part, pursuant to, *inter alia*, 29 U.S.C. §§ 258 and 259 (a), as Defendants have acted in good faith and in reliance upon

applicable regulations and interpretations with regard to some or all of the acts or omissions alleged in the Subject Complaint.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

61. Supplemental or Pendant jurisdiction should not be exercised over any of the claims alleged in the Subject Complaint.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

62. New York Wage Orders bar, in whole or in part, the prosecution of this action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

63. Plaintiff is not entitled to damages, to the extent they failed to mitigate their alleged damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

64. If Plaintiff sustained any injury, damage or loss by reason of any act, error or omission on the part of Defendants, said injury, damage or loss must be reduced on the basis of comparative fault or negligence of Plaintiff, or others, which contributed to and proximately caused any such injury, damage or loss.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

65. The subject Complaint, and each claim purported to be alleged therein, is barred, in whole or in part, by the doctrine of waiver.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

66. The subject Complaint, and each claim purported to be alleged therein, is barred to the extent Plaintiff had unclean hands.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

67. The subject Complaint, and each claim purported to be alleged therein, is barred, in whole or in part, by judicial, equitable and/or collateral estoppel.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

68. The subject Complaint, and each claim purported to be alleged therein, is barred, in whole or in part, by the doctrine of laches.

AS AND FOR A TWELVTH AFFIRMATIVE DEFENSE

69. To the extent Plaintiffs have received other benefits and/or awards attributable to an injury for which they seek compensation in this case, such benefits and/or awards should offset, in whole or in part, any award received here for the same injury.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

70. Plaintiff is entitled to a jury trial only as to those issues for which a jury trial is permitted by the applicable statutes, regulations and ordinances.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

71. Pursuant to The State of New York Department of Labor Minimum Wage Order for the Building Service Industry, Plaintiff is exempt from overtime.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

72. Defendants reserve the right to assert additional Affirmative Defenses as this matter progresses.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

73. At all relevant times, Defendants acted reasonably and/or good faith toward Plaintiff, and has not violated any rights which may be secured to Plaintiff under applicable law.

AS AND FOR A SEVENTEETH AFFIRMATIVE DEFENSE

74. Defendant exercised reasonable care to prevent, promptly correct and remediate any purportedly discriminatory or harassing behavior in their workplace.

AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE

75. Defendant has established and complied with policies and procedures for the prevention and detection of unlawful discriminatory practices by employees, including but not limited to: (i) a meaningful and responsive procedure for investigating complaints of discriminatory practices by employees, and for taking appropriate action against who are found to have engaged in such practices; and (ii) policies against discriminatory practices, which are effectively communicated to employees.

76 The Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

WHEREFORE, Defendants, respectfully pray for judgment as follows:

a. Dismissing the Complaint in its entirety, with prejudice;

b. Awarding the answering Defendants the costs and disbursements of this action; and

c. Such other and further relief as this Court deems just, equitable and proper.

Dated: Woodbury, New York
February 26, 2014

JEFFREY S. ETTENGER (2517)

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